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No. 80-1781

In the Supreme Court of the United States

OCTOBER TERM, 1980

WILLIAM H. MCNICHOLS, JR., ET AL.,
PETITIONERS,

v.

MALCOLM BALDRIGE, SECRETARY OF COMMERCE, ET AL.,
RESPONDENTS.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE TENTH DISTRICT

REPLY BRIEF OF PETITIONERS

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REPLY BRIEF OF PETITIONERS

ARGUMENT

THE CONSTITUTIONAL RIGHT OF ONE MAN - ONE VOTE DEPENDS ON AN ACCURATE ENUMERATION OF PERSONS BY THE BUREAU

The deprivation of the right to equal representation in Congress and in the Colorado General Assembly for the people of the City and County of Denver shall be caused by the inaccurate enumeration of them by the Bureau and cannot be justified by the difficulty of

enumeration in light of evident and correctible discrepancies nor by the Bureau's disclaimers of responsibility.

A. An inaccurate enumeration by the Bureau shall cause a violation of the one man-one vote right.

The Bureau's certification to the State of Colorado of sub-state population figures as required by 13 U.S.C. 141 (c) without their having been corrected for persons residing in living units which were erroneously deemed to be vacant shall cause the districting of Congressional and State legislative seats to be improper. The Bureau denies this causal relationship and reasons that there is no requirement for the State of Colorado to use the Bureau's figures and that the Colorado State Legislature is an intervening cause of any resulting malapportionment. (Resp. Br. pp. 15, 36-37).

The State Legislature in reapportioning for Congressional representation and the State Commission[1] in reapportioning for State lelgislative representation shall and must, as a practical matter, use the Bureau's figures of the population of and within the State of Colorado. The Bureau's figures have been used in the past and are the bases for the current districts in the State of Colorado.[2] The various sections of Article 1. and 2. of Title II. of the Colorado Revised Statutes concerning apportionment are set

[1] The election districts for both the Senate and the House of Representatives of the Colorado General Assembly are determined by a bipartisan *ad hoc* commission composed of representatives from or appointed by all three branches of state government under Section 48 of Article V of the State Constitution.

forth, in pertinent part, in the appendix hereto. And just as with Colorado, in practice, most states use the Bureau's figures. See note, *Demography and District: Constitutional Issues of the Federal Census*, 94 Harv. L. Rev., 841,861 (1981).

Further, by insisting that no one other than it conduct a census, the Bureau ensured that neither the State of Colorado nor the City and County of Denver had, prior to the 1980 Decennial Census, mechanisms and institutions necessary to create the data bases and information which would satisfy the requirements set forth by this Court in *Burns v. Richards*, 384 U.S. 73. (1964) for either updating or substituting the Bureau's figures for use in reapportionment.[3] And finally, the State legislature is already using the Bureau's figures in considering Congressional redistricting. See *Judiith F. Carstens, et al.*, v. *Richard D. Lamm, as governor of the State of Colorado, et al.*, U.S. Dist. Ct. (Colo.) 81-F-1713, filed October 1, 1981.[4]

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[2] Colorado has depended upon and used federal census information including population counts. The census blocks, tracts and enumeration districts are used to describe Congressional and state legislative districts. 2-1-101(1) (a), 2-2-102(1) and 2-2-202(1) C.R.S. 1973. The federal census population figures are expressly recited and used in determining state legislative districts for state senators, 2-2-101 and 2-2-105(3) C.R.S. 1973, and for state representatives, 2-2-201 and 2-2-203(3) C.R.S. 1973. The federal population figures are used expressly for adjusting districts for omissions, 2-1-101(3) (b) C.R.S. 1973, and for annexations 2-1-101(5), 2-2-106(3), (4), and 2-2-204(3), (4) C.R.S. 1973.

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[3] Modifications to the federal census necessarily require knowledge of that which is to be changed. Substitutions for the federal census necessarily require the wherewithal for conducting a complete enumeration. Denver has no substantial argument against the Bureau's location of city boundaries or living unit counts among other various aspects of a census. Adjustments to the Bureau's figures cannot be reasonably made without going into the details of their count - in this case - the living units which it deduced to be vacant, many of which, Denver contends, were occupied by people who were not counted in the 1980 Decennial Census.

The Bureau contends that the act of the Colorado State Legislature shall be the final and intervening cause of malapportionment. (Resp. Br. pp. 15, 37). However, that admittedly intervening cause shall be one which in ordinary experience is reasonably likely to be anticipated, and which the Bureau has reason to anticipate under these particular circumstances, making the Bureau's actions the proximate cause of the malapportionment and precluding the act of the State Legislature being a superseding intervening cause. See W. Prosser, *Law of Torts 238,272 (4th ed. 1971)*. Under either a "but for" theory or a "substantial factor" theory of causation, the errors of the Bureau shall be responsible for malapportionment because it will have failed to supply substate population figures free from an undercount of persons due to erroneously deduced vacant living units and the State Legislature and Commission could not then reapportion on the basis of those uncorrected figures. Prosser, *supra* at 240.

The inaccurate enumeration by the Bureau shall result in the malapportionment of the Congressional Representation allocated to Colorado and of the Colorado General Assembly, which in turn shall result in the deprivation of the rights of one man-one vote of the people of the City and County of Denver.

B. The inherent difficulties of enumeration do not justify inaccurate enumeration where discrepancies are evident.

The Bureau contends that accuracy in enumera-

[4] After the Governor vetoed three separate bills which attempted to redistrict Colorado's six Congressional seats, which were passed by the General Assembly, the plaintiffs are asking the U.S. District Court to intervene. From the Complaint, it is evident that the General Assembly intends to use the population figures from the Bureau in their reapportionment efforts.

tion is unimportant because population counts are inherently inaccurate and were recognized as such by this Court in *Gaffney v. Cummings*, 412 U.S. 735,745 (1973) (Resp. Br. pp. 15, 33).

Even though this Court has recognized that state legislative redistricting can be somewhat affected by other than pure numerical considerations, it has reaffirmed that the starting point in any analysis of the propriety of a reapportionment is numerical equality. This Court has reaffirmed that numerical considerations are still paramount, especially in Congressional redistricting.

In the trial court, Denver did present evidence of the inaccuracies of the Bureau, in more than one fashion.[5] In its brief, the Bureau attempts to rebut Denver's evidence and submits its own testimony which should have been available to it at the time of the hearing below. (Resp. Br. p. 7, n. 8, p. 35, n. 22). This Court has indicated that such proferred testimony will not be considered at the appellate stage. *Schley* v. *Pullman's Palace Car Co.*, 120 U.S. 575, 578 (1887).

The Bureau's contention that it cannot be criticized nor can its actions be reviewed or challenged because of the inherent difficulties of the task assigned to it simply forecloses any control over that process and over the process of reapportionment. This state of lawlessness proposed by the Bureau would undercut the main purpose of the census and the basis for reapportionment and cannot be constitutional.

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[5] In addition to information from utility connections and use and the population figures of the Denver Regional Council of Governments, an independent state-chartered organization, the District Court accepted the results of Denver's survey of approximately one-third of the living units in the city; all of which showed the population of Denver greater than that stated by the Bureau and a vacancy rate of the living units in Denver much less than that deduced by the Bureau.

C. Reapportionment within Colorado is as important as the distribution of Congressional seats among the several states.

Denver has shown that the fact of the matter is that the population figures of the federal census are used by most of the states for reapportionment within those states. At least with respect to Congressional redistricting, it does make some sense to use the same information for reapportionment among the several states and within the states.

The cases which have reached this Court concern the distribution of legislative and Congressional representation within the various states. To argue that the task of assuring equal representation is complete once the seats of the House of Representatives are distributed among the several states is to ignore the lessons of *Baker* v. *Carr*, 369 U.S. 186 (1962), its progeny, and all other similar and related cases.

Notwithstanding the contention of the Bureau, the law which is its charter provides for it submitting sub-state figures to the states, the purpose of which could not be more obvious. 13 U.S.C. 141 (c).

The constitutional right of each person to equal representation cannot be assured and will be deprived without an accurate enumeration, as accurate as is at all possible, of persons by the Bureau.

THE EFFECT OF THE BUREAU WITHHOLDING VACANCY DATA SHALL BE TO HAMPER AND DISCOURAGE WIDESPREAD PARTICIPATION IN FUTURE DECENNIAL CENSUSES.

The Bureau contends that the goal and purpose of the confidentiality provisions of the Census Act is to

encourage widespread participation in the process of the census by all persons. (Resp. Br. pp. 16, 23). The Bureau further claims that Denver can proceed with their challenge and their cause without vacancy data from the Bureau; that Denver should simply use its own survey and make its own census enumeration. (Resp. Br. p. 34). These contentions and these claims are made by the Bureau in view of the fact that it requested that Denver and other local governments not conduct their own census concurrent with the Bureau so as to avoid confusion and encourage participation. And the Bureau cautions Denver in this Court that data which is collected later than that which it collected will be suspect. (Resp. Br. 35, n. 22).

The only practical recourse for Denver and others who now know of the Bureau's peccability and fallibilty is to conduct their own censuses concurrently with the Bureau in 1990. This course of action would certainly create more confusion for the people and discourage their participation in repeated and repetitious badgering by all levels of government and create in their minds disgust and dispair with those in the hands of whom they entrusted their government.

VACANCY DATA IS NOT IMMUNE FROM DISCOVERY IN THIS CASE

Denver submits that the confidentiality provisions of the Census Act provide only that (1) census information is to be used only for statistical purposes; (2) no one may publish information which identifies respondents to the census; and (3) no one without statutory authority may read individual reports. Denver will use the lists of living units deduced by the Bureau to be vacant for precisely those statistical purposes for which that information is intended.

i.e., to ensure an accurate count of the population of the City and County of Denver in the 1980 Decennial Census.[6] Denver shall not, and does not ask that the Bureau, publish information which identifies respondents to the census; nor does Denver wish to read individual reports made to the Bureau by census respondents.[7]

A. Evidentiary previleges are strictly construed.

All privileges which prohibit or restrict a court from the full and complete search for truth are narrowly construed. The "[E]xceptions to the demand for every man's evidence are not lightly created nor expansively construed...", *United States* v. *Nixon*, 418

[6] The Bureau points to *United States* v. *Bethlehem Steel Corp.*, 21 F.R.D. 568 (S.D.N.Y. 1958) and to *Seymour* v. *Barabba*, 559 F.2d 806 (D.C. Cir. 1977) as authorities for broadly construing the confidentiality provisions of the Census Act. In each of those cases, the Bureau was not a party, but was simply the possessor of information which a party desired. In each of those cases, the party desiring the information wanted the information not for the purposes for which it was collected but for other purposes relevant to its litigation. In this case, the Bureau is a party, not simply a disinterested by-stander; and the information is requested and shall be used regarding the very functions, the very *raison d'etre*, of the Bureau, counting population. The rationale of *Bethlehem*, *supra* and *Seymour*, *supra*, is not applicable in this case.

[7] An assertion that, in order to assure that future census respondents will participate freely in the census with the knowledge that their responses shall be confidential, all information and all forms of information must be clothed in secrecy fails to defer to the express provisions of the Census Act and fails to recognize that future census respondents can and will distinguish between disclosure of their questionnaires and disclosure of data and information which is deduced from various sources by the Bureau. Census respondents can't fail to know that the information that they provide to the Bureau is now used for various statistical purposes; the Bureau doesn't simply collect it for the sake of collecting it. It does no service, either practically or in any analysis of the law, to lump together considerations regarding the individual questionnaires of respondents and information such as living units deduced by the Bureau to be vacant on Census Day.

U.S. 683, 710 (1974). This rule of law applies equally well to privileges created by the legislature through statutory enactment. *St. Regis Paper Co.* v. *United States*, 368 U.S. 208, 218 (1961); *Freeman* v. *Seligson*, 405 F.2d 1326,1348 (D.C.Cir. 1968).

The rationale for this suspicion of and aversion for privileges and the reticence in their application is clearly set forth by the U.S. Court of Appeals for the Fourth Circuit in *NLRB* v. *Harvey*, 349 F.2d 900, 907 (4th Cir. 1965):

> [T]he privilege remains an exception to the general duty to disclose. Its benefits are all indirect and speculative, and its obstruction is plain and concrete.*** It is worth preserving for the sake of a general policy, but it is nonetheless an obstacle to the investigation of the truth. It ought to be strictly confined within the narrowest possible limits consistent with the logic of the principle.

This Court has provided guidance in narrowly construing governmental privileges to permit the broadest possible discovery otherwise allowable under the Federal Rules of Civil Procedure, *Jabara* v. Kelley, 75 F.R.D. 475, 480 (E.D.Mich. 1977), in *NLRB* v. *Sears, Roebuck & Co.*, 421 U.S. 132, 149, n. 16 (1975):

> The ability of a private litigant to override a privilege claim set up by the Government, with respect to an otherwise disclosable document, may itself turn on the extent of the litigant's *need* in the context of the facts of his particular case; or on the *nature* of the case... However, it is not sensible to construe the [Freedom of Information] Act to require disclosure of any document which would be disclosed in the hypothetical litigation in which a private party's claim is the most compelling. (Emphasis added.)

The need of Denver in this litigation for the information concerning dwelling units deduced to be vacant by the Bureau was explicitly found by the District Court

(Pet. Br. App. A-3). The nature of this case was characterized by the District Court as concerning the constitutional right to vote of the citizens of the City and County of Denver. (Pet. Br. App. A-3). And the right of Denver to the information is not comparable to any right of a member of the general public to such information under the Freedom of Information Act. (FOIA).

B. FOIA Exemptions are inapposite to discovery disclosure.

The disclosure requirements of the discovery provisions of the Federal Rules of Civil Procedure (F.R.C.P.) are more rigorous than the disclosure requirements of the FOIA.[8] *Firestone Tire and Rubber Co.* v. *Coleman*, 432 F.Supp. 1359, 1371 (N.D. Ohio 1976). The reason for the difference is grounded in the reason for the two different disclosure requirements. Where the FOIA was enacted to provide the general public with the right to obtain information from administrative agencies and agencies in the executive branch of government, Rule 26, *et seq.*, F.R.C.P., were promulgated to provide parties with discovery procedures for obtaining information during litigation. Specific exemptions to the disclosure requirements of FOIA cannot be transposed into or create judicial discovery privilege with respect to such exemptions. *Verranzano Trading Corp.* v. *United States*, 349 F. Supp. 1401, 1403 (Cust. Ct. 1972).

> [T]he exceptions to the disclosure in the Act were not intended to create evidentiary privileges for civil

[8] The Bureau attempts to transfer the impact of the legislative histories relative to the FOIA to considerations for discovery rights of a party in litigation, yet fails to explain the positions of the executive and legislative branches in avoiding the express provisions for which it now longs.

> **discovery... They were intended only to permit withholding of certain types of information from the public generally.** *Kerr* **v.** *U.S. District Court For The Northern District of California*, **511 F.2d 192, 197-8 (9th Cir. 1976), aff'd 426 U.S. 394 (1976).**

See Also *Pleasant Hill Bank* **v.** *United States*, **58 F.R.D. 97, 100-1 (W.D.Mo. 1973);** *McCormick on Evidence*, **(Cleary ed. 1972) §108 at p. 233.**

This Court has already held that this statute, the Census Act, must be strictly construed with respect to the confidentiality provisions therein. *St. Regis Paper Co., supra*, **at 218, which is consistent with its approach to all impediments to the free search for truth, especially in litigation. While there is a statutory prohibition against allowing the disclosure of the actual completed questionnaires of census respondents, there is no such prohibition regarding a list of living units deduced by the Bureau to be vacant on Census Day, nor does the apparent purpose of the prohibition concerning individual reports imply[9] a need for such a judicial expansion of it. The considerations regarding the exemptions from the disclosure requirements of the FOIA are restricted to that statute, whose purpose is not the same as those of the discovery provisions of the Federal Rules of Civil Procedure.**

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[9] **As in this case, this Court was asked to infer more than the Census Act provided in** *St. Regis Paper Co., supra*. **The reasons for this Court refusing to do so then are just as valid today and especially in this case.**

CONCLUSION

The task of the Bureau and the product of its work and the uses to which it is put are too important to allow escape from scrutiny. Such review demands that relevant and material facts be disclosed consistent with the strictures imposed by Congress. The Bureau must be ordered to disclose to Denver a list of living units deduced by the Bureau to be vacant on Census Day so that the count of the people of the City and County of Denver may be as accurate as possible.

Your Petitioners pray the Judgment of the U.S. Court of Appeals for the Tenth Circuit be reversed and the cause remanded to the Court of Appeals with instructions to vacate its stay of the Order of the U.S. District Court for the District of Colorado.

Respectfully submitted,

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OCTOBER, 1981

APPENDIX

SECTIONS OF 1973 COLORADO REVISED STATUTES CONCERNING CONGRESSIONAL AND STATE LEGISLATIVE DISTRICTS

2-1-101. Congressional districts. (1) For the election of representatives to congress, the state of Colorado is divided into five congressional districts as follows:

(a) The first congressional district shall consist of that part of the city and county of Denver which is not contained in the second and fifth congressional districts; census block number 103 in census tract number 119.52 in Jefferson county; census block number 901 in census tract number 120.51 in Jefferson county; those parts of census tracts numbered 49.50, 51.51, 53.50, and 69.51 which are in Arapahoe county; census tract number 69.52 in Arapahoe county; census block number 101 in census tract number 48.52 in Arapahoe county; that part of census block number 301 in census tract number 67.51 which is in Arapahoe county and which is bounded on the west by Quebec street, on the south by Belleview avenue, and on the northeast by the right-of-way of Interstate highway 25; and those parts of census blocks numbered 906 and 907 in census tract number 68.54 which are in Arapahoe county.

2-1-101. (3) (b) If the area is contiguous to two or more congressional districts, the area shall be attached to the district that has the least population according to the last preceding national census of the United States bureau of the census.

2-1-101. (5) (a) If any annexation occurring on or after May 1, 1972, changes a county boundary which constitutes any portion of the boundary of a congressional district defined by this article and if the popula-

tion of the area annexed is one hundred seventy persons or less acccording to the 1970 federal census, the secretary of state shall detach the area annexed from the congressional district in which it is included pursuant to this article and shall attach such area to the adjacent congressional district in the county to which the area was annexed; except that, if such attachment would result in any area in one congressional district being wholly surrounded by area in another congressional district, no adjustment in congressional district boundaries shall be made. If the area annexed is adjacent to two or more congressional districts in the county to which it is annexed, the area shall be attached to the congressional district having the least population. The area so attached shall also be attached to any general election precinct adjacent to such area in the county to which the area was annexed.

(b) If any annexation occurring on or after May 1, 1972, changes a county boundary which constitutes any portion of the boundary of a congressional district defined by this article and if the population of the annexed area is more than one hundred seventy persons according to the 1970 federal census, no adjustment in the boundaries of congressional districts shall be made, but the area annexed shall constitute a separate general election precinct.

2-2-101. Number of members of general assembly - election from districts. (1) The senate of the general assembly shall consist of thirty-five members and the house of representatives thereof shall consist of sixty-five members, with one member of the senate to be elected from each senatorial district and one member of the house of representatives to be elected from each representative district, as established in this part 1.

(2) The definition of areas to be included in each senatorial and representative district is by reference to

counties and to official census tracts, census divisions, census block groups, census blocks, and enumeration districts created by the United States bureau of the census to which fixed population counts have been assigned as of the year 1970.

2-2-102. Senatorial districts - number - composition. The senatorial districts are defined as follows:

(1) **District 1:** Census tracts numbered 1.01, 1.02, 3.01, 3.02, 3.03, 5.00, 6.00, 7.01, 7.02, 97.00, 104.01, 106.01, and 115.00 in the city and county of Denver; that part of census tract number 2.01 in the city and county of Denver which is not contained in district 2; census block groups numbered 4 and 5 in census tract number 2.02 in the city and county of Denver; census block groups numbered 3 and 4 and census blocks numbered 105, 106, 115, 201, 214, and 215 in census tract number 4.01 in the city and county of Denver; census block groups numbered 5, 6, and 7 and census blocks numbered 104, 105, 106, 107, 114, 115, 201, 202, 209, 210, 211, and 212 in census tract number 4.02 in the city and county of Denver; those parts of census tracts numbered 8 and 9.01 in the city and county of Denver, which are not contained in district 4; that part of census tract number 97.50, which is in the city and county of Denver, being a part of census block number 210; and census block group number 3 and census blocks numbered 901, 908, and 909 in census tract number 97.50, which block group and blocks are in Adams county.

2-2-105. Legislative declaration - findings of legislative fact. (1) The general assembly declares it to be necessary to meet the equal population requirements of section 46 of article V of the state constitution, and it has therefore been necessary, in some instances, to add part of one county to all or part of another county in forming senatorial districts under this part 1.

(2) The general assembly further declares that some senatorial districts are not comprised of areas whose boundaries are equidistant from the geographic center of the respective areas, but that variations therefrom were necessitated by population density and distribution, boundaries of enumeration districts and other identifiable census units of area, natural boundaries, and county lines in order to define senatorial districts having population as nearly equal as may be.

(3) Pursuant to the requirements of section 47 of article V of the state constitution, the senatorial districts established by this part 1 are based upon the following factors: (1) Equal population; (2) a minimum split of counties; and (3) compactness based upon geographic areas whose boundaries are as nearly equidistant from a center as possible, limited by variances caused by the shape of county boundary lines, census enumeration lines, natural boundaries, population density, and the need to retain compactness of adjacent districts.

Colorado's population as established by the 1970 federal census is 2,209,528. An average senatorial district is 63,129. The maximum deviation in excess of this average for a senatorial district as provided by this part 1 is 0.83 percent, while the smallest district is only 0.66 percent below average.

2-2-106. Attachments and detachments. (1) If any area of this state is omitted from the provisions of this part 1, inadvertently or by virtue of the complexities of the information supplied to the general assembly, the secretary of state, upon discovery of such omission, shall attach such area to the appropriate senatorial or representative district as follows:

(a) If the area is surrounded by a senatorial or representative district, the area shall be attached to such district;

(b) If the area is contiguous to two or more senatorial or representative districts, the area shall be attached to the district that has the least population according

to the last preceding national census of the United States bureau of the census.

(2) If any area of this state is included in two or more senatorial or representative districts established by this part 1, inadvertently or by virtue of the complexities of the information supplied to the general assembly, the secretary of state, upon discovery of such inclusion, shall detach such area from the senatorial or representative district or districts having the largest population and shall designate such area as being included in the senatorial or representative district having the least population; except that if such area is wholly surrounded by a senatorial or representative district and by inadvertence is also included in another senatorial or representative district, the secretary of state shall designate such area as included in the district wholly surrounding such area, regardless of population.

(3) If any annexation occurring on or after May 1, 1972, changes a county boundary which constitutes any portion of the boundary of a senatorial district defined by this part 1, and if the population of the area annexed is one hundred seventy persons or less according to the 1970 federal census, the secretary of state shall detach the area annexed from the senatorial district in which it is included pursuant to this part 1 and shall attach such area to the adjacent senatorial district in the county to which the area was annexed; except that if such attachment would result in any area in one senatorial district being wholly surrounded by area in another senatorial district, no adjustment in senatorial district boundaries shall be made. If the area annexed is adjacent to two or more senatorial districts in the county to which it is annexed, the area shall be attached to the senatorial district having the least population. The area so attached shall also be attached to any general election precinct adjacent to

such area in the county to which the area was annexed.

(4) If any annexation occurring on or after May 1, 1972, changes a county boundary which constitutes any portion of the boundary of a senatorial district defined by this part 1, and if the population of the annexed area is more than one hundred seventy persons according to the 1970 federal census, no adjustment in the boundaries of senatorial districts shall be made, but the area annexed shall constitute a separate general election precinct.

2-2-201. Number of members of general assembly - election from districts. (1) The house of representatives of the general assembly shall consist of sixty-five members, with one member of the house of representatives to be elected from each representative district, as established in this part 2.

(2) The definition of areas to be included in each representative district is by reference to counties and to official census tracts, census divisions, census block groups, census blocks, and enumeration districts created by the United States bureau of the census to which fixed population counts have been assigned as of the year 1970.

2-2-202. Representative districts - number - composition. The representative districts are defined as follows:

(1) **District 1:** Census tracts numbered 47.00, 48.01, 55.02, 55.03, 56.01, 119.02, and 120.01 in the city and county of Denver; that part of census tract number 120.51 which is in the city and county of Denver, being census block number 901 and a part of census block number 902; those parts of census tracts numbered 46.03 and 48.02 in the city and county of Denver which are not contained in district 2; that part of census tract number 46.01 in the city and county of Denver which is not contained in district 3; that part of census tract number 46.02 in the city and county of Denver which is

not contained in district 3; that part of census tract number 119.03 in the city and county of Denver which is not contained in district 28; census block number 101 in census tract number 119.53 which block is in the city and county of Denver; census block number 103 in census tract number 119.52 in Jefferson county; and that part of census tract number 120.02 which is in the city and county of Denver and is within five hundred feet of the southern boundary of the right-of-way of west Quincy avenue.

2-2-203. Legislative declaration - findings of legislative fact. (1) The general assembly declares it to be necessary to meet the equal population requirements of section 46 of article V of the state constitution in some instances to add part of one county to all or part of another county in forming representative districts under this part 2.

(2) The general assembly further declares that some representative districts are not comprised of areas whose boundaries are equidistant from the geographic center of the respective areas, but that variations therefrom were necessitated by population density and distribution, boundaries of enumeration districts and other identifiable census units of area, natural boundaries, and county lines in order to define representative districts having population as nearly equal as may be.

(3) Pursuant to the requirements of section 47 of article V of the state constitution, the representative districts established by this part 2 are based upon the following factors: (1) Equal population; (2) a minimum split of counties; and (3) compactness based upon geographic areas whose boundaries are as nearly equidistant from a center as possible, limited by variances caused by the shape of county boundary lines, census enumeration lines, natural boundaries, population density, and the need to retain compactness of adjacent districts.

Colorado's population as established by the 1970 federal census is 2,209,528. An average representative district is 33,993. The maximum deviation in excess of this average for a representative district as provided by this part 2 is 0.81 percent, while the smallest district is 1.02 percent below average.

2-2-204. (3) If any annexation occurring on or after May 1, 1972, changes a county boundary which constitutes any portion of the boundary of a representative district defined by this part 2, and if the population of the area annexed is one hundred seventy persons or less according to the 1970 federal census, the secretary of state shall detach the area annexed from the representative district in which it is included pursuant to this part 2 and shall attach such area to the adjacent representative district in the county to which the area was annexed; except that if such attachment would result in any area in one representative district being wholly surrounded by area in another representative district, no adjustment in representative district boundaries shall be made. If the area annexed is adjacent to two or more representative districts in the county to which it is annexed, the area shall be attached to the representative district having the least population. The area so attached shall also be attached to any general election precinct adjacent to such area in the county to which the area was annexed.

2-2-204. (4) If any annexation occurring on or after May 1, 1972, changes a county boundary which constitutes any portion of the boundary of a representative district defined by this part 2, and if the population of the annexed area is more than one hundred seventy persons according to the 1970 federal census, no adjustment in the boundaries of representative districts shall be made, but the area annexed shall constitute a separate general election precinct.